

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 301 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF INCOME TAX

Versus

AMBALAL SARABHAI TRUST NO.30

Appearance:

MR MANISH R BHATT for Petitioner
SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

Date of decision: 05/03/98

ORAL JUDGEMENT

(Per R.K.Abichandani,J)

The Income-tax Appellate Tribunal has referred the following two questions for the opinion of

this Court under section 256(1) of the Income-tax Act, 1961.

"1. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that in respect of sale of shares by the assessee, the provisions of section 11(1A) of the Income-tax Act, 1961 were applicable even though 90% of the unrealised sale proceeds were kept by way of fixed deposits with the purchasers ?"

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the provisions of section 13(2)(h) of the Income-tax Act, 1961 were not applicable to the facts of the case ?"

2. The matter relates to the assessment year 1974-75. The assessee filed Refund application on 31.8.1974 in form no. 30 declaring loss of Rs. 753/-. During the relevant previous year, the assessee Trust had sold certain shares for a net consideration of Rs. 13,226/-. It was claimed before the ITO that the amounts received on account of sale of these shares were kept in fixed deposits bearing interest and therefore, the provisions of section 11(1A) of the Act were attracted. The Income-tax Officer rejected this claim and proceeded to work out capital gains by applying the provisions of section 52(2) of the Act. The assessee had also claimed that shares were received by way of donation and that there was no investment made by the trustees in a concern in which the person referred in section 13(3) had a substantial interest. The ITO had forfeited the exemption of dividend income by invoking the provisions of section 13(3) of the Act and non-allowance of deduction under section 80(L) of the Act. In appeal, on the first count it was held that the provisions of section 11(1A) of the Act were applicable to the assessee's case. On the other ground, the appellate authority held that the assessee was not hit by the provisions of section 13(2)(h) of the Act. The Tribunal in appeal preferred by the Department following its earlier order dated 10.7.80, in the case of ITO vs. Ambalal Sarabhai Trust No. 3 held that the provisions of section 11(1A) of the Act were applicable to the facts of the assessee's case. Following its earlier decision in CIT vs. Insaniat Trust rendered on 5.4.1978, the Tribunal held that the assessee was not hit by the provisions of section 13(2)(h) of the Act.

3. At the hearing of this Reference, it is brought to our notice that in CIT vs. Ambalal Sarabhai Trust No. 3 reported in 173 ITR, 683 this Court had opined on a question identical to the question no. 1 of this Reference that capital gains resulting from the sale of shares were required to be exempted from tax under section 11(1A) of the Act. For the same reasons as are given for deciding the said question, by this Court in Ambalal Sarabhai Trust No. 3 (Supra), we answer the question no. 1 in the affirmative against Revenue and in favour of the assessee.

4. As regards question no. 2, our attention is drawn to the judgment and order of this Court in CIT vs. Insaniat Trust, reported in 173 ITR, 248 in which while dealing with a question identical to the question no. 2 of this Reference, this High Court held that since the assessee Trust did not invest its funds in purchasing shares in question which were purchased by the donor and then given to the assessee Trust, section 13(2)(h) of the Act was not applicable and the dividend received from the shares by the assessee was entitled to exemption. For the same reasons as are given for deciding the said question, we answer the question no. 2 in the affirmative against Revenue and in favour of the assessee.

5. The Reference stands disposed of accordingly with no order as to costs.

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